

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1016

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-1016

B
P/s

UNITED STATES OF AMERICA

APPELLEE

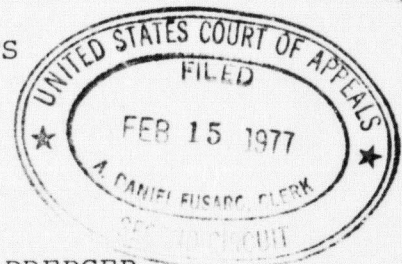
-vs-

LUIS E. CHICO and GAIL A. COLELLO

APPELLANTS

On Appeal From the United States District Court
For the District of Connecticut
=====

APPENDIX TO BRIEF FOR APPELLANTS
=====



PETER GOLDBERGER
ASST. FEDERAL PUBLIC DEFENDER
770 Chapel Street
New Haven, Connecticut 06510
(FTS) 8-643-8148
Attorney for Appellants

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Docket Entries	1
Indictment	4
Petition for Probation Violator Warrant (Luis E. Chico)	7
Petition for Probation Violator Warrant (Gail A. Colello)	8
Order Continuing Probation and Adding Special Condition of Probation (Luis E. Chico)	9
Order Continuing Probation and Adding Special Condition of Probation (Gail A. Colello)	10
Petition for Reconsideration of Defendant's Motion to Dismiss Probation Violation Proceedings and to Vacate Judgments of Conviction and Sentence (Endorsed "Motion Denied")	12
Notice of Appeal	14

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

T. FLET CLARIE

H 346

D. C. Form No. 100 Rev.

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

vs.

LUIS E. CHICO and
GAIL A. COLELLO

Stewart H. Jones, US Attorney
Randolph C. Roeder, Asst US Atty
450 Main St., Hartford, Conn.

For Defendant:

Luis Chico-Thomas Dennis, Asst.
656 Ellington Road
South Windsor, Conn.
06074

Gail Colello - William P. Murray, Jr.
Appointed 40/Ross/St. 62 LaSalle Road
Rest Hartford, Conn. 061067
Luis Chico - Robert Santos
Public Def. 450 Main St.
Hartford, Conn.

Luis E. Chico - cts. 3 & 4

Gail A. Colello - " 1 & 2 Peter Goldberger - 12-6-76 - both defts.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation U. S. Code	Docket fee				
Title 18					
Sec. 2113(b), 2 & 656					

PROCEEDINGS

DATE
1972

10/10

The Grand Jury at Hartford returned a True Bill of Indictment charging violation of 18 USC 2113(b) in cts. 1 & 3 - did take and carry away, with intent to steal and purloin, from a bank, the deposits of which were then insured by the F.D.I.C.; and 18 USC 2 & 656 in cts 2 & 4 - aid, abet, counsel, command, induce and procure an employee of a bank insured by F.D.I.C. to embezzle funds which had come into her possession and were under her care by virtue of her position as employee. Summons to issue for Monday, Oct. 16th for plea. (Clarie, J.) m, 10/11/72

10/11

Summons issued in duplicate and with certified copy of the indictment handed US Marshal for service.

10/16/72

Defendants did not appear. Bench Warrants may issue with bond to be set by Magistrate. (Clarie, J.) m-12/6/72.

10/16

Bench Warrants issued in duplicate for each defendant and with certified copies of the indictment handed US Marshal for service.

10/13

Marshal's return showing service, filed. (Summons, both defts.)

Continued

DATE	PROCEEDINGS
1972	
10/20	Registered Mail receipt #651407, filed. (Luis Chico)
"	Marshal's unexecuted return filed. (Summons, Gail Colello)
11/6	(Deft., L. E. Chico) Public Defender appointed (Mr. Santos).
"	2 weeks for motions. Plea continued 2 weeks. (Blumenfeld, J.)m-11/7/72
"	(Deft., Colello) Appointed counsel to be appointed. (Blumenfeld, J.)m-11/7/72
11/13	CJA 20 executed (Blumenfeld, J.) appointing William P. Murray, Jr. to represent Defendant, Gail A. Colello.
11/20	Plea of not guilty entered by Deft., Luis Chico to counts 3 and 4. (Blumenfeld, J.)m-11/21/72
"	PLEA of not guilty entered by Deft., Gail Colello to counts 1 and 2. (Blumenfeld, J.)m-11/21/72
12/4	Motion to withdraw plea of not guilty to count 2 by Defendant, Gail Colello - Motion Granted. CHANGE OF PLEA of guilty to count 2 entered and a finding of guilty entered on the plea. (Clarie, J.)m-12/5/72
1973	
1/17	Defendant Gail A. Colello's Motion For Production and Disclosure of Pre-sentence Report, filed.
1/23	Atty Santos advises Court he is not acquainted with prospective witness, Margy Wright and knows nothing of her case - She was represented by Mr. Clifford - Atty. Roeder requests Court to appoint an outside Attorney to represent Deft., Luis Chico. - Court appoints Atty. Thomas Dennis... Jury to be selected on 2/6/73. (Clarie, J.)m-1/24/73
2/5	DISPOSITION (Deft., Gail Colello)-ct.2- imprisonment for one year, execution suspended - Probation for two years. Sentence to commence upon defendant's release from State custody. (Clarie, J.)m-2/6/73
2/5	Order of dismissal of count 1 of the Indictment (Gail Colello), filed. (Clarie, J.)m- 2/9/73
2/8	Judgment and Order of Probation, filed. (Clarie, J.)m- 2/13/73 Two attested copies handed US Probation Officer in Hartford. (Gail Colello)
2/8	CJA 20 executed (Clarie, J.) appointing Thomas Dennis to represent Defendant, Luis Chico.
2/20	CJA 20 executed (Clarie, J.) and mailed to A.O. for payment. (Deft. Gail Colello)
2/1	Marshal's return showing service, filed. (Warrant for Arrest of Defendant Colello)
2/27	PLEA of not guilty entered to Count 4 by Defendant Luis E. Chico withdrawn and Defendant enters CHANGE OF PLEA of guilty to count 4. Continued on same bond for pre-sentence report. (Clarie, J.)m-2/28/73
1/17	Court Reporter's Notes of Proceedings held on November 20, 1972, filed in Hartford. (Collard, R.)
1/17	Court Reporter's Notes of Proceedings held on November 20, 1972, filed in Hartford. (Collard, R.)
1/17	Court Reporter's Notes of Proceedings held on December 4, 1972, filed in Hartford. (Sperber, R.)
1/17	Court Reporter's Notes of Proceedings held on October 14, 1972, filed in Hartford. (Sperber, R.)
4/24	Court Reporter's Sound Recording of Proceedings held on February 27, 1973, filed in Hartford. (Sperber, R.) (Plea-Chico.)
1/17	Court Reporter's Notes of Proceedings held on November 6, 1972, filed in Hartford. (Collard, R.)

Continued on Page 2

PROCEEDINGS

DATE

1973

6/25

DISPOSITION-Luis E. Chico, et. 4 - imposition of sentence suspended defendant placed on probation for two years upon release from State custody. Condition of probation is that defendant make restitution of stolen funds. Order of Dismissal of count 3, filed. (Clarie, J.) min.

4/19

m-6/27/73 Order m- 6/29/73
Court Reporter's Notes of Proceedings held on February 5, 1973, filed. (Sperber, R.)

4/19

Court Reporter's Notes of Proceedings held on February 27, 1973, filed. (Sperber, R.)

6/29

Judgment and Order of Probation, filed. (Clarie, J.) m-7/3/73
Two attested copies handed US Probation Officer in Hartford. (Luis Chico)

3/1

Court Reporter's Sound Recording of Proceedings held on October 16, 1972, filed in Hartford. (Sperber, R.)

3/1

Court Reporter's Sound Recording of Proceedings held on December 4, 1972, filed in Hartford. (Sperber, R.)

3/1

Court Reporter's Sound Recording of Proceedings held on February 5, 1973, filed in Hartford. (Sperber, R.)

7/3

CJA 20 executed (Clarie, J.) and mailed to A.O. for payment. (Chico)

8/1

Court Reporter's Notes of Proceedings held on June 25, 1973, filed in Hartford. (Sperber, R.)

8/16

Court Reporter's Sound Recording of Proceedings held on June 25, 1973, filed in Hartford. (Sperber, R.)

8/16

Court Reporter's Sound Recording of Proceedings held on November 20, 1972, filed in Hartford. (Collard, R.)

9/17

Marshal's return showing service, filed. (Warrant, Deft. Chico)

10/12/76

Probation Form #12 requesting a warrant issue, filed. (Clarie, J.) M.10-12-76. (re deft. Chico)

10/12/76

Probation Form #12 requesting a warrant issue, filed. (Clarie, J.) M.10-12-76. (re deft. Colello)

10/14/76

Warrants For Arrest of Probationer's issued and handed U.S. Marshal in Hartford. (re both deft's.)

12/6

Hearing on Probation Violations; Minutes of Meeting held before Magistrate Latimer and other moving papers filed by Mr. Gamble with Court - Motion to Dismiss hearing on Probation Violation made by Public Defender, Motion Denied. Court continues both Defendants on Probation for a period of one year that is probation to be extended for one year. Restitution of \$400.00 must be made by Chico within that time. While on Probation, the Probation Officer may at any time request urine tests, if found to be on drugs a further order of the Court may be made as to treatment. (Clarie, J.)

12/10

Petition For Reconsideration of Defts' Motion to Dismiss Probation Violation Proceedings and to Vacate Judgments of Conviction and Sentence, filed.

12/10

Appearance Bonds in the amount of \$1000.00 each for each deft., filed. (Latimer, Mag.) M.12-13-76.

12/10

Marshal's executed returns, filed. (Warrant for Arrest of Deft. - both deft's.)

12/13

Order Continuing Probation and Adding Special Condition Of Probation, filed. (Clarie, J.) M.12-13-76. Copies sent to counsel - DEFT. COLELLO. Two attested copies handed US Prob. Officer.

12/13

Order Continuing Probation and Adding Special Condition Of Probation, filed. (Clarie, J.) M.12-13-76. Copies sent to counsel - DEFT. CHICO. Two attested copies handed US Prob. Officer.

12/14

Endorsement entered on Petition For Reconsideration... "12/13/76. Motion denied. So Ordered." (Clarie, J.) M.12-14-76. Copies sent to counsel.

Continued to 4/6/73

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
FILED AT HARTFORD

10/12, 19 72
GILBERT C. KYLE, Clerk

By LAL
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

LUIS E. CHICO and
GAIL A. COLELLO

:

:

:

CRIMINAL NO. 4346

INDICTMENT

The Grand Jury charges:

COURT ONE

On or about the 1st day of October, 1971, in the District of Connecticut, GAIL A. COLELLO wilfully and unlawfully did take and carry away, with intent to steal and purloin, from the Burritt Mutual Savings Bank in New Britain, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, certain money aggregating \$400, belonging to the Bank, in violation of Title 18, United States Code, Section 2113(b).

COUNT TWO

On or about the 1st day of October, 1971, in the District of Connecticut, GAIL A. COLELLO did aid, abet, counsel, command, induce and procure Harry Wright, an employee of the Burritt Mutual Savings Bank in New Britain, Connecticut, a member bank of the Federal Reserve System, to embezzle, wilfully and knowingly and with the intent to injure and defraud the bank, the sum of \$400 of the funds and credits of the bank which had come into her possession and were under her care by virtue of her position as employee, in violation of Title 18, United States Code, Sections 2 and 656.

COUNT THREE

On or about the 21st day of October, 1971, in the District of Connecticut, LOUIS E. GHICO wilfully and unlawfully did take and carry away, with intent to steal and purloin, from the Burritt Mutual Savings Bank in New

Britain, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, certain money aggregating \$400, belonging to the Bank, in violation of Title 18, United States Code, Section 2113(b).

COUNT FOUR

On or about the 21st day of October, 1971, in the District of Connecticut, IVIS E. CHICO did aid, abet, counsel, command, induce and procure Mary Wright, an employee of the Burritt Mutual Savings Bank in New Britain, Connecticut, a member bank of the Federal Reserve System, to embezzle, wilfully and knowingly and with the intent to injure and defraud the bank, the sum of \$400 of the funds and credits of the bank which had come into her possession and were under her care by virtue of her position as employee, in violation of Title 18, United States Code, Sections 2 and 656.

A TRUE BILL

/s/ WADE P. ABBOTT
Foreman

STEWART H. JONES
United States Attorney

/s/ RANDOLPH C. FOWLER
RANDOLPH C. FOWLER
Assistant U. S. Attorney

United States District Court

FOR THE

District of Connecticut

FILED

OCT 12 11 00 AM '76

THE UNITED STATES

vs.

LUIS E. CHICO

Division

Docket No. C- H-346

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

COMES NOW Ellis Gamble PROBATION OFFICER OF THE COURT
presenting an official report upon the conduct and attitude of probationer Luis E. Chico
who was placed on probation by the Honorable J. Emmet Clarie
sitting in the court at _____, on the 25th day of June, 1973
who fixed the period of probation supervision at two (2) years, and imposed the
general terms and conditions of probation theretofore adopted by the court and also imposed special
conditions and terms as follows:

Violation of 18 USC 656, Theft of Bank Funds.
Imposition of sentence is suspended, defendant is placed on probation for a period
of two (2) years. Said sentence to commence upon defendant's release from State
custody. Condition of probation is that defendant make restitution of stolen funds.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS
FOLLOWS: (If short insert here; if lengthy write on separate sheet and attach)

On or about March 12, 1976 he changed his place of residence and failed to notify
his Probation Officer of the change. His present whereabouts are unknown (Condition
No. 5).

He failed to report as directed from March 11, 1976 to September 30, 1976. On August
6, 1975 he was instructed to report in person the first and third Tuesdays of each
month and to make a written report on the first Tuesday of each month (Condition No.
7).

Failure to make restitution (Special Condition).

PRAYING THAT THE COURT WILL ORDER a warrant to issue for Violation of
Probation.

ORDER OF COURT

Considered and ordered this 6 day
of October 19 76 and ordered filed
and made a part of the records in the above
case.

[Signature]
U.S. District Judge

Respectfully,

[Signature]
Probation Officer

New Haven, Connecticut

Date October 1, 1976

MICROFILM
OCT 12 1976
HARTFORD

United States District Court

FOR THE

District of Connecticut

THE UNITED STATES

vs.

GAIL A. COLELLO

Division _____

Docket No. C- H-346 _____

COMES NOW Ellis Gamble PROBATION OFFICER OF THE COURT
Gail A. Colello
 presenting an official report upon the conduct and attitude of probationer
 who was placed on probation by the Honorable T. Ernest Clarie
 sitting in the court at Hartford, on the 5th day of February, 19 73
 who fixed the period of probation supervision at two (2) years, and imposed the
 general terms and conditions of probation theretofore adopted by the court and also imposed special
 conditions and terms as follows:

Violation of 18 USC 656, Theft of Bank Funds.
 Committed to the custody of the Attorney General or his authorized representative
 for imprisonment for a period of one (1) year, execution suspended; defendant is
 placed on probation for a period of two (2) years. Said sentence to commence upon
 defendant's release from State custody.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS
 FOLLOWS: (If short insert here; if lengthy write on separate sheet and attach)

On or about March 12, 1976 she changed her place of residence without notifying her
 Probation Officer. Her present whereabouts are unknown (Condition No. 5).

She failed to report as directed from March 11, 1976 to September 30, 1976. On
 October 15, 1974 she was directed to report in person on first and third Tuesdays
 of each month between 9:00 a.m. and 7:00 p.m. and to make written report on every
 first Tuesday (Condition No. 7).

PRAYING THAT THE COURT WILL ORDER a warrant to issue for Violation of
 Probation.

ORDER OF COURT

Considered and ordered this _____ day
 of _____ 19 _____ and ordered filed
 and made a part of the records in the above
 case.

 U. S. District Judge

Respectfully,

Ellis Gamble
 Probation Officer

Place New Haven, Connecticut

Date October 1, 1976

DEC 13 1976

HARTFORD

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT
HARTFORD, CONN.

Dec 13 12 05 PM '76

CLERK

UNITED STATES OF AMERICA

v.

Criminal No. H-346

LUIS E. CHICO

ORDER CONTINUING PROBATION AND ADDING SPECIAL

CONDITION OF PROBATION

The above named upon his plea of guilty to one count in violation of Title 18, U. S. Code, Section 656, having been sentenced by the undersigned at Hartford on June 25, 1973, as follows: Imposition of sentence is suspended with probation for two (2) years, and

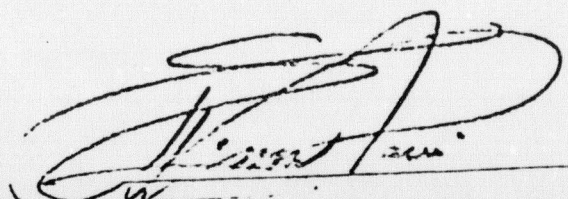
Said probationer having been this day presented before me at Hartford for Violation of Probation, represented by counsel and given an opportunity to be heard,

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that said Luis E. Chico has violated his probation, and,

IT IS FURTHER ORDERED that said probation be continued for one (1) year beyond the original expiration date, resulting in a termination date of May 30, 1978, and the probationer is instructed to make restitution in the amount of four hundred dollars (\$400.00) within the one year period, and,

IT IS FURTHER ORDERED that a Special Condition be attached to Chico's probation that he may be required to submit to random urinalysis and, when deemed necessary, enter whatever drug rehabilitation program that the Court deems necessary.

Signed and dated this 6th day of December, 1976, at Hartford, Connecticut.



DEC 13 1976

FILED

HARTFORD UNITED STATES DISTRICT COURT

DEC 13 12 05 PM '76

DISTRICT OF CONNECTICUT

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES OF AMERICA

v.

Criminal No. H-346 *21*

GAIL A. COLELLO

ORDER CONTINUING PROBATION AND ADDING SPECIAL
CONDITION OF PROBATION

The above named upon her plea of guilty to one Count in violation of Title 18, U. S. Code, Section 656, having been sentenced by the undersigned at Hartford on February 5, 1973, as follows: Committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year, execution suspended, probation for a period of two (2) years, and,

Said probationer having been this day presented before me at Hartford for Violation of Probation, represented by counsel and given an opportunity to be heard,

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that said Gail A. Colello has violated her probation, and,

IT IS FURTHER ORDERED that said probation be continued one year beyond the original expiration date, resulting in a termination date of October 29, 1977, and,

IT IS FURTHER ORDERED that a Special Condition be attached to Colello's probation, that she may be required to submit to random urinalysis and, when deemed necessary, enter whatever drug rehabilitation program the Court deems necessary.

Signed and dated this 6th day of December, 1976, at Hartford,
Connecticut.

A handwritten signature in dark ink, appearing to read "Robert L. Davis". The signature is stylized with a large, sweeping initial "R" and "L".

Chief United States District Judge

RECEIVED

DEC 15 1976

OFFICE OF THE FEDERAL
PUBLIC DEFENDER, N.H.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DEC 19 1 05 PM '76

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA :

-vs- :

Criminal No. H-346 *Ed.*

LUIS E. CHICO and
GAIL A. COLELLO :

PETITION FOR RECONSIDERATION OF DEFENDANTS' MOTION
TO DISMISS PROBATION VIOLATION PROCEEDINGS
AND TO VACATE JUDGMENTS OF CONVICTION AND SENTENCE

12/13/76
" Motion denied
So unduly
USDC

The defendants, Luis E. Chico and Gail Colello, petition this Court to reconsider its order entered in open court, December 6, 1976, denying their oral motion to dismiss the probation violation proceedings then pending against them and to vacate the judgments of conviction and sentence entered against them in this Court on June 25, 1973. At the time of entry of these judgments, the indictments against them were of no force or effect, and the defendants were entitled to have the indictments dismissed with prejudice, pursuant to the Interstate Agreement on Detainers, Article IV(e). In support the defendants allege:

- (1) In April of 1972, each defendant was sentenced in the Superior Court of Connecticut to a term of five to seven years' imprisonment.
- (2) On October 10, 1972, the defendants were charged in the instant indictment.
- (3) They were brought from state confinement to federal court for arraignment on November 20, 1972, and then returned to state custody. On December 4, 1972, Ms. Colello was returned to

federal court to change her plea as to Count II; she was brought back again on February 5, 1973, for sentencing. On February 27, 1973, Mr. Chico was returned to federal court to change his plea as to Count IV; he was brought back again for sentencing on June 25, 1973.

(4) Trial was not had, nor the case otherwise disposed of, prior to their being returned to their original places of imprisonment.

(5) Both Connecticut and the United States were, in 1972 and 1973, parties to the Interstate Agreement on Detainers. U.S. Pub. L. 91-538, §§ 1-8, Dec. 9, 1970, 84 Stat. 1397-1403; 1957 Conn. Pub. Act 404, § 1, Conn. Gen. Stat. § 54-186.

(6) The Agreement, in Article IV(e), provides: "If trial [in one jurisdiction of a prisoner taken for trial from confinement in another jurisdiction] is not had on any indictment . . . contemplated hereby prior to the prisoner's being returned to the original place of imprisonment . . . , such indictment . . . shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."

(7) The defendants cannot be liable for violating a probationary sentence imposed on a plea to a void indictment.

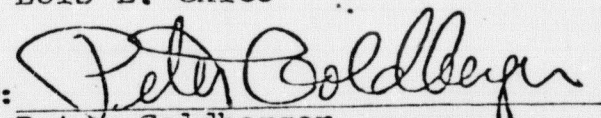
WHEREFORE, the defendants pray that this Court reconsider its ruling of December 6, 1976, and:

1. Dismiss the probation violation proceedings;
2. Vacate the convictions and pleas of the defendants; and
3. Dismiss the indictment in this case.

Dated at New Haven, Connecticut, this 9th day of December, 1976.

THE DEFENDANTS
GAIL A. COLELLO and
LUIS E. CHICO

By:


Peter Goldberger
Asst. Federal Public Defender
770 Chapel Street

FILED

DEC 16 12 55 PM '76

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

-VS-

LUIS E. CHICO and
GAIL A. COLELLO

Criminal No. H-346

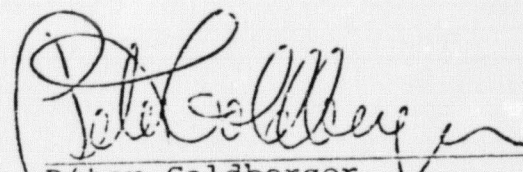
T. Ernest Charlie, C.I.

NOTICE OF APPEAL

Notice is hereby given that Luis E. Chico and Gail A. Colello, defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from an order denying their Petition for Reconsideration of Defendants' Motion to Dismiss Probation Violation Proceedings and to Vacate Judgments of Conviction and Sentence filed in this action on the 14th day of December, 1976.

Dated:

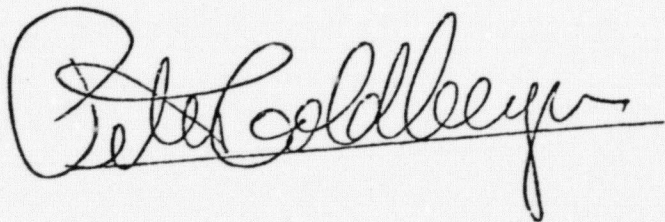
December 16, 1976



Peter Goldberger
Asst. Federal Public Defender
770 Chapel Street
New Haven, Connecticut 06510

CERTIFICATE

I mailed two copies of Appellants' Brief and Appendix
to Thomas P. Smith, Esq., Assistant United States Attorney,
450 Main Street, Hartford, Connecticut, this 14th day of
February, 1977.

A handwritten signature in cursive script, appearing to read "Peter Goldberger", written over a horizontal line.

ENDER

06510